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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,378	02/01/2002	William C. Johnson	102-02	2400

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EXAMINER	
RAGONESE, ANDREA M	

ART UNIT	PAPER NUMBER
3743	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/061,378	JOHNSON, WILLIAM C.	
	Examiner	Art Unit	
	Andrea M. Ragonese	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) *14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on August 10, 2004 has been entered. Examiner acknowledges that **claims 1** and **4** have been amended and **claim 14** has been withdrawn without traverse.

2. The rejection to **claims 1-14** under 35 USC § 112, as stated in Office action dated June 4, 2003, has been withdrawn.

Response to Arguments

3. Applicant's arguments filed on October 2, 2003 have been fully considered but they are not persuasive. Regarding the amendment made to **claim 1**, adding the phrase "for a device in an aircraft or other passenger transport with a ventilating system" does not put the instant application in condition for allowance. Applicant has essentially claimed a statement of intended use. The prior art of record [Lawrence (US 1,614,739) in view of Wallroth et al. (US 6,095,137)] teaches an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Lawrence in view of Wallroth et al. is ***capable of*** being used "for a device in an aircraft or other passenger transport with a ventilating system". This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in apparatus claims. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP § 2114.

4. Additionally, in response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

5. Therefore, as broadly interpreted by the Examiner, the previously presented rejection, in Office action, mail date June 4, 2003, is applied to **claims 1-13** based on the prior art of record and has been made **FINAL**. See *In re Swinehart*, 169 USPQ 226 (CCPA 1971); *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. **Claims 1-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence (US 1,614,739) in view of Wallroth et al. (US 6,095,137). Full support for this rejection can be found in the previous Office action, mail date June 4, 2003.

9. Regarding **claims 1-3, 6, 10** and **12-13**, Lawrence discloses a device that is fully capable of lessening dangers to passengers in hijacking situations in aircraft or other passenger transport comprising an enclosed hardened system **1** for a device in an

aircraft or other passenger transport with a ventilating system and an activating means **7** that is accessible through a security device **12**. The enclosed system **1** contains mechanical or electrical controls **6, 8** to activate a reservoir **2** of volatile somnolent substance and means to vaporize **5** said volatile somnolent substance, which is fully capable of releasing the substance into an aircraft's ventilating duct **9**, which is released at a level that induces sleep (column 1, line 46 through column 2, line 56). Lawrence does not explicitly disclose an activation means in the form of a valve to control gas from the igniter or the use of a monitoring means to sense the level of incapacitating gas. However, Wallroth et al. discloses such a valve **17** (column 3, lines 40-44) and a monitoring means **9** (column 3, lines 16-20). The references are analogous since they are from the same field of endeavor—the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Wallroth et al. and used them with the device of Lawrence. The suggestion/motivation for doing so would have been to regulate the gas generated by the igniter to optimize delivery and to better control and modulate the amount of incapacitating gas to prevent death and injury to the passengers and terrorists. Therefore, it would have been obvious to combine the references to obtain the instant application's claimed invention. Furthermore, such features are old and well known in the art, and one of ordinary skill in the art would consider, such to amount to a mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

10. Regarding **claims 4-5, 7-9** and **11**, Lawrence discloses a device that is fully capable of lessening dangers to passengers in hijacking situations in aircraft or other passenger transport comprising all limitations recited in **claims 4-5, 7-9** and **11**, but does not expressly disclose a system constructed of reinforced plastics, an activating means constructed of a hand moved valve, a two-key system, an alphanumeric code pad or the specific substance used to sedate passengers and terrorists. However, at the time of the invention was made, the use of reinforced plastics, hand moved valves, two-key systems, alphanumeric code pads and these specific substances was well known. Therefore, it would have been obvious to one having ordinary skill in the art to the use of reinforced plastics, hand moved valves, two-key systems, alphanumeric code pads and these specific sedative substances as Applicant has done. Moreover, Applicant has not asserted that these specific elements recited provide a particular advantage, solve a stated problem or serve a purpose different from that of common construction materials, activating means, security devices or sedative substances. Accordingly, the Examiner considers the selection of such elements to be obvious and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary. Therefore, it would have been obvious to modify the apparatus of Lawrence by substituting the construction materials, activating means, security devices or sedative substances, because it is well known in the art to use such elements in order to construct a system or activate the system or secure the system or sedate passengers and terrorists. Furthermore, such features are old and well known in the art, and one of ordinary skill in the art would consider, such to amount to a mere

obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **Andrea M. Ragonese** whose telephone number is **(703) 306-4055**. The examiner can normally be reached on Monday through Friday from 8 am until 4 pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR

Henry Bennett
Supervisory Patent Examiner
Group 3700